

# DECISION NOTICE AND FINAL EA

## THOMPSON AND FISHER RIVER VALLEYS CONSERVATION EASEMENT

*Prepared by Region One, Montana Fish, Wildlife & Parks  
November 9, 2000*

*Smokers  
Lined  
Flathead*

### OVERALL PROPOSAL

Montana Fish, Wildlife, and Parks (FWP) proposes to purchase and monitor a conservation easement on two significant contiguous parcels owned by Plum Creek Timberlands, L. P. (PCT), a limited partnership, successor by merger to Plum Creek Timber Company. The goal of this project is to maintain important wildlife habitats in perpetuity while also allowing for commercial timber and other resource management activities as well as and public recreational uses of the land. The parcels are located in both the Fisher and Thompson River valleys of northwest Montana. The proposed conservation easement includes approximately 140,250 acres with approximately 84,200 acres in the Thompson River valley and another 56,000 acres in the Fisher River valley.

The purchase price for the proposed conservation easement is approximately \$29.9 million. FWP proposes to acquire the conservation easement over 3-4 years based on current and anticipated funding availability. FWP and PCT plan to close on approximately 12,000 acres in phase one in December 2000. During implementation, the value for the unencumbered lands would be adjusted for changes in market values.

### CONSERVATION EASEMENT TERMS

The major provisions of the proposed conservation easement are:

- ☐ Allow the Landowner to continue responsible management of the land's commercial timber base according to the Environmental Principles and Sustainable Forestry Initiative;
- ☐ Allow Landowner to manage other resources with specific limitations as described in the conservation easement and this draft EA;
- ☐ Allow Landowner to continue to permit grazing at current levels;
- ☐ Restrict future divisions of land to 35 and prohibit commercial and residential development on all encumbered lands (regardless of the land division) in perpetuity;
- ☐ Allow for existing levels of commercial outfitting but prohibiting all exclusive commercial outfitting;
- ☐ Allow for continued public access to the land consistent with current public use restrictions on PCT

Team to address future management of public access and other issues associated the conservation easement.

The specific terms of the conservation easement in their entirety are contained in a separate legal document that is the "Draft Deed of Conservation Easement". This draft document lists FWP's and landowners' rights under the terms of the easement as well as restrictions on landowner activities. FWP and the landowner negotiated the rights of both parties and the restrictions on landowner activities in the conservation easement.

### APPRAISAL AND PURCHASE PRICE

The property was appraised by Illi Appraisal following federal appraisal standards. The Chief Appraiser of the Forest Service in Washington D.C subsequently approved the appraisal at a value of \$31.6 million. FWP

and PCT agreed to a purchase price of approximately \$29.9 million for a total adjusted acreage of 140,250 acres. PCT plans to donate approximately \$1.6 million in value.

### **LAND ADJUSTMENTS**

The original appraisal covered approximately 140,482 acres. However, in the draft EA, we proposed a conservation easement on 142,000 acres. Both FWP and PCT wanted to adjust the proposed boundaries since the appraisal. PCT wanted to exclude about 230 acres while FWP wanted to add acreage. Both parties agreed to reduce the conservation easement area by approximately 230 acres that reduced the project cost by approximately \$95,000.

Rather than add acres and increase price, the parties agreed to include new parcels exchange for removing similar parcels within the conservation easement area. FWP and PCT plan to remove 1,600 backland acres from the south end of the Thompson River valley and add 1,600 acres in the upper Fishtrap drainage. For the Fisher River, FWP and PCT plan to add 420 acres along the Fisher River and Highway 2 but drop 420 other acres from elsewhere in the Fisher River project area.

Finally, PCT asked FWP to include a 120-acre inholding that they acquired from a private landowner within the Fisher River project area just above Highway 2. FWP plans to incorporate the 120 backlands inholding in exchange for excluding another 120-acre backlands piece in the Fisher.

### **OPTION AND FUNDING**

The Trust For Public Land (TPL) has an option on the proposed conservation easement lands. The option agreement will be exercised in phases, as funding becomes available for FWP's purchase of the conservation easement.

FWP anticipates project funding can be obtained primarily from the Wildlife Mitigation Program Trust Fund (Trust Fund), Avista Corporation, and the Forest Legacy Program. The Trust Fund, in-kind services, Avista Corporation, and PCT's donation of the difference between the appraised value and the sale value (\$1.6 million) will be used as the state's required 3:1 match for Forest Legacy.

### **SELECTED ALTERNATIVE: LANDS AND PHASES**

FWP recommends implementing the project in phases in such a way that FWP can encumber large contiguous land blocks of land in both drainages with each phase. This is a combination of alternatives 1 and 5 from the draft EA. (See Alternative Section page 24 Draft EA for more details). Alternative 1 proposed to complete the conservation easement on the entire project; Alternative 5 proposed to complete the project in large land blocks in both drainages. Size of the blocks would be in proportion to the funds available for total project cost. In other words, if 1/4 of total cost were available in year one, then this would allow 1/4 of the project area to be initially encumbered. Based on fish and wildlife values, FWP and PCT have agreed to begin at both the north end of the Fisher and the south end of the Thompson valleys and work toward Highway 2.

#### **Phase One: 2000**

FWP anticipates closing phase one by the end of December, 2000 with the available funds from Avista Corporation (\$400,000) and Forest Legacy (\$1 million) and \$600,000 from the Wildlife Mitigation Program for a total of \$2 million. FWP plans to place the conservation easement on approximately 12,000 acres of PCT lands in Fishtrap Creek drainage at the south end of the Thompson River project area.



## **Phase Two: 2001**

If FWP successfully obtains \$5 million from the Forest Legacy Program in 2001, a second closing would take place by late spring or early summer 2001. FWP would provide the needed matching funds through in-kind services, PCT's donation, and the Trust Fund.

## **Phases Three and Four: 2002 - 2004**

Subsequent phases would continue to depend on available funding from Forest Legacy and would be matched with the Trust Funds and other available sources. If funding continues to be available, the TPL's option would be extended to August, 2004 if needed.

## **MONTANA ENVIRONMENTAL POLICY ACT/ DRAFT EA**

FWP is required to assess the impacts of the proposal and alternatives to the human and physical environment. Before completing the details of the proposed action and writing the draft Environmental Assessment (EA) document, FWP completed extensive public outreach throughout 1998. FWP presented the information to more than 500 citizens that attended dozens of town, club, homeowners, and social organizational meetings. From January 1998 and February 1999, news about the proposed project ran 12 times in local newspapers.

During 1998 and 1999, FWP and PCT also met several times with county commissioners from Sanders, Lincoln and Flathead counties. FWP and PCT presented the project to the Region One Citizen Advisory Council and Wildlife Mitigation Advisory Council. FWP provided numerous updates to the FWP Commission as well as to other federal and state agencies in northwest Montana. FWP also presented the project to the Confederated Salish and Kootenai Tribal Council. Input from this outreach helped design the proposed agreement as well as identify the alternatives and issues in the draft EA.

To insure that local planning authorities were notified of the project at least 90 days before the scheduled FWP Commission decision meeting on this project, FWP sent a project summary and abstract of conservation easement terms to the county planning authorities and county commissioners in Lincoln, Flathead, and Sanders counties. The materials were mailed on August 10, 2000.

As part of our responsibilities under the Montana Environmental Policy Act (MEPA), FWP issued a draft EA on the proposed project September 15, 2000. FWP sent the draft EA to approximately 90 individuals, organizations, or libraries. Recipients included the Sanders, Lincoln, and Flathead County Commissioners, FWP Commissioners, Wildlife Mitigation Advisory Council members, Confederated Salish and Kootenai Tribes, Montana Dep. of Natural Resources and Conservation (DNRC), the Lolo and Kootenai National Forests as well as other organizations and individuals. FWP also sent 170 cards to adjoining private landowners and other organizations and interested individuals asking if they wanted to receive a copy of the draft EA or other materials. Based on card returns and other publicity, FWP mailed or provided another 38 copies of the draft EA or Executive Summary to interested individuals and landowners. FWP also distributed numerous copies of the draft EA at the scheduled open house/hearings. Copies of the draft EA and other materials were placed in the Region One lobby. The entire draft EA along with an Executive Summary, Question and Answer Sheet, Press Release, and all maps were posted on FWP's web site under Notices on September 18, 2000.

On September 14, FWP released a press release about the project, draft EA, and upcoming open house/public hearings to all the local northwest Montana media. FWP also paid for hearing notice advertisements in the Daily Interlake, Western News, and Sander's County Ledger. News about the proposed project and upcoming hearings ran in all major northwest Montana newspapers as well as on two major TV networks and four radio stations. FWP hosted four formal public hearings in northwest Montana, each preceded with a one-hour open house. Hearings took place in Polson on Sept. 28; Thompson Falls on October 3; Kalispell on October 4; and Libby on October 5. During the open houses, the public had the opportunity to review maps and materials and ask questions. A total of 72 people signed in at the four public hearings.

### **NEED FOR EIS and FINAL EA**

After issuing the draft EA and completing public review, FWP does not believe this proposed action would significantly impact the social or physical environment and therefore believes this project does not need an Environmental Impact Statement. However, the public identified issues that need further discussion and responses from FWP. FWP has included the responses to each of the issues in this Decision Notice. Therefore, this Decision Notice in conjunction with the Draft EA and all appendices constitutes the Final EA for the proposed project.

### **SUMMARY OF PUBLIC COMMENTS**

FWP received 100 different written or orally presented public comments. Most respondents (93%) fully supported the proposed project. Approximately 82 individuals and 11 organizations supported the proposed project. The supporting organizations included the Flathead County Planning Board, Flathead Regional Development Office, Sanders County Commissioners, Sanders County Planning Department, Flathead Wildlife Inc., Polson Outdoors, Flathead Audubon Society, North Valley Sportsman, Trout Unlimited, Libby Rod and Gun Club, and Region One's Citizen Advisory Committee. Another six individuals or organizations neither supported nor opposed the proposed project but raised important issues or concerns either with the conservation easement terms or the draft EA. These included the Lincoln County Commissioners, Montana Dept. of Natural Resources (DNRC), Western Montana Cattlemen's Association, American Wildlands, and one individual from Thompson Falls. We addressed these issues and concerns in the following subsection. The Cabinet Resource Group and two Montana Wilderness Association comments limited their support for the project primarily because of overall project cost as well as timber management issues. The Conservation Director of the Montana Wilderness Association opposed the project for some of these same reasons.

Proponents mentioned the following major reasons for their support in descending order: 1. Recreational opportunity (mentioned 50 times), fish or wildlife habitat (23 mentions), open space or no development (22 mentions), and commercial timber (17). Other reasons for support included maintenance of traditional uses, keeping some degree of mineral exploration/development; approval of current land and recreation management, and allowing the landowner to exercise their property right. A few hoped for more projects like this in the future.

### **Issues and Responses**

FWP summarized issues and grouped those that were common to more than one respondent. We identified 38 separate issues in the following five issue categories.

#### **A. INADEQUACY OF DRAFT EA AND DISCUSSION OF ALTERNATIVES.**

1. Why not consider fee-acquisition? Why not consider purchasing the land and letting it be managed as part of the school trust lands?



In our early discussions with PCT, fee-purchase of the entire block of developable land by FWP was not an option either entity wished to pursue. PCT identified 70,000 acres of Higher and Better Use lands for sale in 200 to 500-acre parcels, not in one large parcel. FWP doesn't have the resources to purchase or manage such a large area in fee. Although purchasing these lands was not a viable option in our discussions with PCT, we did receive public input on fee-acquisition during our early discussions with interest groups and during other public discussions. The majority of public interests supported the idea of FWP acquiring the development and public access rights rather than fee-title interest. In the draft EA, FWP identified eight total alternatives. We identified fee-acquisition of land as one of the three alternatives that were reviewed and dismissed. As discussed in the draft EA on page 13, fee-title purchase by FWP would not meet either FWP's or PCT's objectives of maintaining the status quo over the large project area.

The conservation easement does not preclude future purchases of land in fee nor parcel size, only the number of times (e.g. 35) that the land can be divided for such purposes. A future purchase or land exchange with DNRC that somehow provides management of timber for the benefit of school trust fund could be something for future parties to consider.

**2. FWP has not evaluated a full range of alternatives nor provided sufficient detail such as costs or locations for each of the alternatives.**

As stated above, FWP developed a full range of reasonable alternatives that met the intent of the conservation easement and the concept of status quo. We considered and dismissed three alternatives: fee purchase, purchase of conservation easement on scattered tracts, and purchase of conservation easement on HBU lands only (p. 13 draft EA). We considered another five alternatives, including no action and the proposed alternative on pages 14-32. FWP provided as much detail as existed for each of the proposed alternatives. We described the objectives, criteria, examples, and tradeoffs associated with each alternative as well as the various environmental effects. Additionally, until the final appraisal review was completed and actual funding potential known, it was impossible to describe the exact location for phases of the project. FWP believes we provided sufficient information to get public input on the range and types of realistic alternatives. The details and rationale for the selected alternative as well as costs and acreage are provided in this Final EA and Decision Notice.

**3. FWP should complete an EIS because the EA did not adequately discuss the effects of commercial timber production on the environment.**

An EIS is required if a proposed action would significantly affect the quality of the human environment. In this action, timber production allowable is not a state action, but a private action. FWP is proposing to purchase a conservation easement that could reduce the environmental effects of subsequent timber management by requiring the landowner to implement Best Management Practices and the Sustainable Forestry Initiative, actions that are now voluntary. We are not making a decision to undertake commercial timber harvest nor proposing a range of alternatives that have different environmental effects of commercial timber harvest. Therefore, a detailed analysis of the overall effects of commercial timber management on the environment is outside the scope of the proposed project except as part of the no-action alternative. Under this alternative, we did discuss the differences between the no action and the other alternatives with respect to continued commercial timber harvest and development on the environment. Our conclusion was that the environmental effects of the no action were likely to be more harmful to the physical environment than any of the other alternatives. For the human environment, the no action alternative affected different economic sectors than the proposed action or other alternatives; the magnitudes of the socio-economic impacts

were similar under both the no action and proposed action alternatives. The socio-economic impacts of other alternatives were considered intermediate to those evaluated in the socio-economic report.

**4. In the EA, FWP did not provide timber data; we didn't reveal the truth about logging.**

FWP could not obtain information on logging levels as it was considered proprietary by the landowner. The purpose of the Forest Legacy Program, one of the primary funding sources, is to maintain working forests by restricting other incompatible uses such as development. We clearly stated that these lands would be managed for commercial timber harvest. In the Multi-Resource Management Plan (Appendix F, p. F-2) the plan states the intent of the landowner is to "maximize fiber growth with the intent of developing multi-stage stands of timber". Since our first discussions with PCT, it was clear they were not willing to negotiate timber restrictions beyond Environmental Principles and Best Management Practices. FWP worked with PCT to include Sustainable Forestry Initiative principles in both the conservation easement language and in the Multi-Resource Management Plan. Several of these principles within the Sustainable Forestry Initiative include protection of fish and wildlife habitat and encourage responsible sustainable timber management over the long run (Appendix B, draft EA.). Although the easement may not protect the habitat as much as would be optimal, we feel the conservation easement provides better habitat protection than no conservation easement.

**5. In the socio-economic report, fishing pressure on the Fisher seems to be overstated. Most of the area's fishing is on the Kootenai River. Sources we have indicate not much fishing takes place along the Fisher. Values to local economy may be inflated.**

The respondent was correct in their observation that the Fisher River is not fished much in comparison to the Kootenai River. For 1997, the Montana Statewide Angling Pressure Survey estimated that while the Fisher River received 2,299 angler trips, the Kootenai River in Lincoln County received 41,084 angler trips. Therefore, consistent with this comment and our analysis is the finding that the Fisher River only receives about 5% of the total angler pressure that the Kootenai River receives.

As an outside bound of possible error in our estimates from overstating Fisher River use, consider the following. Total estimated lost direct annual angler expenditures for the Fisher River under the development scenario are only 4.8% of the total estimated lost angler and hunter expenditures. Therefore, with regard to the Fisher estimates, the maximum possible overstatement to total lost angler and hunter impacts is under 5% of that estimate.

**lies from Gallatin County.**

In addition to the Gallatin and Flathead County studies, over 70 additional parallel studies of counties across the country have results consistent with those found in the Gallatin and Flathead studies.

**7. Lincoln County can take care of more students than indicated in the socio-economic report.**

This more recent information on Elementary school capacity in Libby does not materially change the analysis of impacts in the socio-economic report.

**8. Our sources in Lincoln County suggest we could get 15 jobs per MMBF rather than 6.64 jobs MMBF used in the socio-economic report.**

The section on the impacts on timber industry employment in our report used the Power (1992) estimate of 6.64 direct timber related jobs per 1 MMBF. The public comment suggests that instead we should use Dr. Keegan's estimate of between 8 and 12 direct jobs per MMBF. This would suggest that our estimates of the employment impacts associated with the no-purchase alternative are understated by between 20% and 80%. Employing the Keegan employment estimates in our analysis would make the easement purchase alternative significantly more attractive vs. the no-purchase alternative where lands could be used primarily for residential development.

- 9. Estimates of residential construction and new resident spending are too simplistic. If you look at it cumulatively over 24 years, Lincoln County would receive a value added income of \$11,856,000.**

The Lincoln County comment explicitly notes the cumulative impact of new construction and new spending over the 24-year period. While these calculations are correct, two points must be made: 1) the relevant baseline for comparing these cumulative impacts is the cumulative economic activity for the counties over the same 24 year period, not the current year baseline, and 2) a rigorous analysis of cumulative impacts would calculate the net present value of the impacts. This net present value calculation would significantly discount the value of impacts 10, 15, or 20+ years from now to correct for the time value of money. A net present value analysis of impacts was not employed in our analysis because of the speculative nature of several of the categories of anticipated impacts.

While \$11.8 million seems large at first, when compared to the sum of anticipated economic activity in the two counties over the next 24 years, this number is much more modest and indeed reflects the annual impacts we present in the report.

- 10. Disposable income of new residents in one year is \$137,000. If you assume this over 24 years it would be \$3,288,000 but it would go on forever. This does not include the total disposable income generated throughout the 24-year period (\$37,949,000). Also, after 24 years there would be 120 new jobs to support this new economy.**

Regarding the cumulative nature of new resident spending and related employment, we explicitly noted that this would be accumulated over time in the socio-economic report (p. D-27, draft EA) but did not calculate out the cumulative spending. It is also important to note the assumptions used in these calculations. The socio-economic report notes that estimates of new resident spending is based on the assumption that all the new homes would be inhabited by year-round residents. To the extent that some of these homes would be vacation, or second homes, this estimate would be overstated. The socio-economic report also notes that estimated increases in income and employment resulting from increased resident spending are based on the assumption that if a good or service is available in the two counties, the new residents will choose to purchase it there. Regional centers such as Kalispell and Missoula have many large chain stores such as Walmart or Costco which often sell products at a significant discount over small, independently owned stores. Consequently, the impacts associated with increased resident spending should therefore be viewed as upper bound estimates of employment and income impacts.

## **B. PROJECT COSTS/APPRAISAL TOO HIGH.**

- 1. The costs are much too high; this is corporate blackmail. Paying this high cost will set a precedent for other conservation easement projects of this type.**



Several organizations thought the appraised value for the 142,000-acre conservation easement was too high. In the draft EA, we presented the overall estimated value to be approximately \$225/acre or \$31.6 million for the whole project.

FWP and its partners had several other consulting appraisers working with the PCT appraiser during the entire two years it took to complete the final appraisal. In addition, we paid for a review of the Plum Creek appraisal. The U.S. Forest Service Chief Appraiser's review subsequently supported the Plum Creek appraised value of \$31.6 million. We share the public's desire to keep the cost of this conservation easement as low as possible because it would affect the cost of future land projects not only in Montana but also throughout the country. However, we do see an eventual long-term trend that would result in development along the last two undeveloped river valleys in northwest Montana. Most of the public comment concurred with this view. We agreed at the outset with PCT that we would negotiate for a fair market value. A subsequent reduction in appraised acres (230) reduced the overall appraised value by approximately \$95,000. Further, PCT agreed to gift \$1.6 million in value to the state. We believe the final purchase price (approximately \$29.9 million) is consistent with current market values as it has undergone professional scrutiny at both the state and federal level.

2. **There is not that great a risk of development. This scenario assumes that the existing taxpayer will continue to subsidize rural development. The appraised value did not take any of these policies into consideration.**

The appraisers and socio-economists that evaluated the value of the conservation easement can only use actual data and past trends in their analyses, not potential future actions. For example, this comment would encourage us to reduce the development value based on the ability of county or state government to change tax structures to disfavor Plum Creek. However, development value could also be increased if we considered possible future action of paving the Thompson River Road. If new policies were in place that limited potential future development in the project area, these would have been considered in the appraisal and socio-economic report. However, no such policies exist at this time.

3. **What is/was the cost of public access?**

The exact value of the public access was not specifically itemized within the appraisal as a separate right to be acquired but rather was included in the overall estimate of value loss due to imposition of perpetual easement terms.

ighting fires this summer. Can you use that

to reduce the price of this project.

Plum Creek officials claim they do not owe the state anything for fire-fighting costs. A portion of taxes paid by PCT go into a fire fund.

5. **What does FWP spend on its block management program?**

Statewide, FWP manages a multi-million dollar block management program. In 1996, Region One established a block management agreement with PCT. In that agreement, FWP agreed to enforce road restrictions and other rules and regulations affecting public use on PCT's lands. The cost to FWP of this program for the approximately 800,000 acres of PCT land in Region One is \$70,000 each year. FWP recently renewed this agreement with PCT for another five years.

**6. Why should FWP pay cost of public access because PCT couldn't afford to keep the public out?**

We have concerns that in the future, PCT or the next landowner may not have the same opinions with respect to public access, particularly on the blocks of PCT land in the Thompson and Fisher valleys. We agree that there would be some cost to PCT to close these lands to all public recreation and that in some areas of their ownership, this might be difficult. We are fortunate that as a significant private landowner in northwest Montana, PCT has already accepted the block management approach to public access. Furthermore, we are fortunate this landowner is willing to allow unlimited public access in perpetuity on some of their best recreational lands via the conservation easement. Public comment overwhelmingly supported this project because it provided public recreational opportunities. It was up to professional appraisers to evaluate the impact on property values. Our review appraiser agreed that public access had some measure of value as reflected in the final purchase price. FWP believes that this opportunity to obtain public recreational access in perpetuity may not be available with future landowners.

**7. Can we get a copy of the appraisal?**

Both the final and review appraisals can be viewed by making an appointment with the Lands Division of FWP in Helena. Certain portions of the appraisal such as the comparable sales data are considered proprietary and may not be made available at this time.

**8. You should have better explained the role of Trust for Public Land (TPL) in this project.**

In the draft EA (page 3, Funding), FWP identified that TPL was one of its partners to help secure Forest Legacy Funds. However, we did not provide details of how that organization operates nor its exact role in this proposal. TPL is a nonprofit land trust that often purchases or holds land or interests in land until public funds become available for the purchase.

In the case of the Thompson and Fisher project, TPL will to work at the national level to help Montana get the appropriate funds (e.g. the Forest Legacy Funds) from the administration and Congress. To insure that PCT does not begin to sell its land for subdivision during the 3-4 year phases of the project, TPL holds an option on PCT's project area lands. When Forest Legacy funds become available for closings, TPL will exercise its option and allow the conservation easement to be conveyed to FWP. In return, TPL has a professional service agreement with PCT to raise funds for the project.

**his purchase with none of the funds going to the county?**

to set private property tax rates for their area consistent with state revenue laws and land classification. We recognize the issue of paying forestland tax rates on undeveloped properties with high development potential, but know of no current legal requirement for PCT to provide any portion of the conservation easement sale proceeds to a county. The issue of county taxation is clearly an issue between various taxing authorities and outside the scope of the

**10. These lands were originally railroad land grants; we shouldn't have to pay for public access.**

A significant portion of this project's lands were part of the historic land grants given to the Great Northern Railroad as payment for the Great Northern Railroad's development of the railroad across Montana. The federal government gave these lands free and clear to the Great Northern Railroad with

no guarantee to the public of access or other rights. These lands have remained in the private sector since that time. We know of no precedent where railroad land grants have property values different from other private lands in Montana.

### **C. MONITORING AND MANAGING THE CONSERVATION EASEMENT WITH RESPECT TO PUBLIC USE**

- 1. Public use will increase dramatically with all this national and local attention. Public use will increase just as it did at the Thompson Chain of Lakes after FWP acquired those lands. With FWP management comes the spiraling increase of public recognition, increased use, increased management, and more restrictions. The same will occur in the Thompson and Fisher. You cannot maintain the status quo in this project with respect to recreational uses.**

The intent of this conservation easement is to maintain the status quo for recreation as it is for other activities. The public is welcome to use this property for outdoor recreation as long as they abide by the public use restrictions that are currently in place on PCT's lands and also incorporated in the conservation easement. Under the status quo and terms of the conservation easement, neither FWP nor PCT have an obligation to provide public facilities or services for the public's use. However, the principle parties also realize that public use in the Thompson and Fisher will likely increase due to inherent factors such as increased population growth in the northwest part of the state. Additionally, other factors such as publicity and proposed reconstruction of the Thompson River road could change use patterns. We stated on page 29 of the draft EA that paving of the Thompson River Road could lead to increased levels of recreation on all lands, not just conservation easement lands, in the basins.

FWP made several commitments in the Monitoring and Management Plan provided in the draft EA that address public use. First, on page G-3 of this Plan, we described the purpose of the Liaison Team that would be established by the conservation easement. The goals of the Liaison Team would be to "anticipate and resolve issues that might arise between the Landowner and FWP, address issues associated with public use, and review and modify the Multi-Resource and Monitoring and Management Plan on a periodic basis." More specifically, we thought it would be critical to future discussions of public access that we establish a baseline. On page G-5, we said the baseline for recreation would include types, seasons, and extent of existing public use. We also stated that we would monitor these levels, seasons, and extent over time to compare to the baseline and to monitor the effects public use on fish and wildlife resources. Although we did not clearly address how we would manage increases in public use, we did attempt to lay the groundwork for future decisions.

In response to public comment above, we will clarify the Monitoring and Management Plan to better address the potential for increased public use that goes beyond the status quo. Therefore, we propose not only to provide baseline information on seasons, types, and levels of recreational uses but that we also inventory popular campsites, access points, and public needs such as sanitation. We will clarify the Monitoring and Management Plan so it will state by this reference that public use levels in the future may exceed current levels.

Again, it is our intent to maintain the existing types and levels of recreational uses (e.g. dispersed recreation, camping, driving, hiking, hunting, fishing, and trapping) to the extent practicable. Neither FWP nor the landowner wants to greatly encourage growth in recreational use. But FWP and PCT recognize that we cannot limit public use except by the means provided in the conservation easement. Public use for conservation easement lands is principally guided by the following:

- Public Use Restrictions described in Appendix C of the draft EA;



- Landowner's right to manage its own private roads to vehicle access;
- Landowner's right to close areas undergoing timber harvest or those areas damaged by the public;
- Landowner's right to close lands in emergencies;
- By agreement of both landowner and FWP to regulate public use in specific environmentally sensitive areas.

Although the goal for the conservation easement overall is to maintain the status quo, FWP and PCT recognize that at some point in the future this goal may not be completely realistic. Therefore, in this final EA, FWP and PCT recognize that the Liaison Team will have the challenge of balancing the goals of maintaining the status quo with possible increasing levels of public use. The challenge will be how to accommodate increased demands without promoting ever-increasing levels of use that would be inconsistent with our overall goal of maintaining the status quo.

**2. We already need public facilities such as toilets, trash pick up, and monitoring of the camping rules in the Thompson.**

FWP received several questions and comments from local residents in the two basins who believe we already need public facilities, trash pickup, and enforcement of camping rules in the Thompson and Fisher River valleys. As stated above, FWP will complete a baseline inventory during all seasons that includes the current location, types, and levels of use. The baseline should identify any critical needs for public health, safety, and resource protection. FWP will provide its findings and recommendations to the Liaison Team. The overall goal of the conservation easement is to maintain the status quo. The Liaison Team (see also D.1.) could recommend other management options such as education, hunting season regulations, and monitoring to reduce public impacts as well. We refer you also to our response to comments under C.1.

**3. Language affecting public use was changed from original handouts where landowner could close "environmentally sensitive areas" to public use. Now it says "specific sensitive areas as agreed to by both parties" (page 11 draft EA). What are the guidelines for determining environmentally sensitive areas? Will there be any opportunity for public involvement in these decisions?**

The purpose of this original language for this restriction on public use was to allow the landowner the right to close an area if needed to protect a rare ecological site or some important piece of habitat. Originally, the landowner had the right to close an "environmentally sensitive area" to all public use. After receiving public comment on this concept, we agreed to clarify the language to reflect that the conservation easement holder should also participate in any decisions affecting an environmentally sensitive area closure. PCT agreed to these changes. The intent of the new language is to require both parties to agree before closing a specific environmentally sensitive area. Such an area could be a rare plant community, a bald or golden eagle nest area, a calving area, or some other vitally important habitat or unique ecological or archaeological site. The key words we added were "specific" indicating that the area had boundaries and could not be general landscapes or ownerships and "as agreed to by both parties" or joint decision-making so that these specific areas needed mutual consent and rationale for closing, not just the opinion of one party. We envision that the Liaison Team would ultimately provide the specific criteria and implement such decisions. In response to how the public would be included in such a decision, we refer you to D. 1. LIAISON TEAM, below.

Here is the new language in the conservation easement under Landowner's rights:

*"The right to regulate public use of the Land at all times, subject to the public's recreational access described under Department's Rights in this Easement. The Landowner retains the right to restrict public use in specific areas and under special circumstances as are required to protect and restore environmentally sensitive areas, sites damaged by public use or natural disasters, areas currently undergoing timber harvest or timber management activities such as reseeding or replanting, in emergency situations and for public safety reasons, and in other areas or circumstances where the Conservation Values could be adversely impacted by public use. Landowner must give Department written notice of areas closed to public use as soon as practical after such closure. Restrictions to protect and restore environmentally sensitive areas or to address circumstances where the Conservation Values could be adversely impacted by public use require mutual consent of the Landowner and the Department. Mutual consent of the Landowner and the Department is not required for roads closed to protect and restore environmentally sensitive areas provided that foot access is allowed."*

- 4. With the landowner's ability to divide and sell parcels of any size, how would you protect the public's right to use the lands, particularly if a new landowner decided their purchased lands were "sensitive"?**

Under the proposed conservation easement, the landowner can divide encumbered land for the purpose of sale or exchange into no more than 35 distinct parcels. There are no acreage limits for these divisions. We worked with PCT to cap the number of land divisions so that FWP would have a reasonable maximum number of future landowners with lands encumbered by this conservation easement. The cap helps insure that FWP can logistically monitor the terms of the conservation easement including the right of public access. Under the proposed conservation easement terms, future landowners and FWP would still have to mutually agree to close public access to "specific environmentally sensitive areas". As stated in the previous issue, we envision the Liaison Team developing the criteria and process for using this exception along with some type of citizen advisory group. The specific steps FWP proposes to use to monitor the public access terms of the conservation easement are described on pages G-5 & G-6 of the Monitoring and Management Plan in the draft EA.

- 5. Recreational use will greatly increase with construction of a paved Thompson River Road.**

On page 9 of the draft EA, FWP acknowledges the Forest Service's ongoing plans to pave a major road through the Thompson. We also described some of the effects the paved road might have on the conservation easement lands (see community impacts page 27-28; government services pages 28-30) with and without the proposed conservation easement. We state on page 30 that increased demands for recreation will increase if the Thompson River road was paved. At this point, the effects on the conservation easement or public use is not known. The effects of the new road on the conservation easement as they develop from FWP's baseline and monitoring would be available for the Forest Service's EIS.

- 6. Who is going to pay the costs of managing recreation?**

The principle parties structured this conservation easement with the concept of trying to maintain the status quo. Currently, PCT is responsible for managing public recreation on their property and will continue to bear some of the costs in the future. However, both PCT and FWP recognize that we will need to work together should levels of public use and costs associated with managing that use increase. The conservation easement requires the establishment of a Liaison Team to "address resource management, public access, easement monitoring, road and gate replacement, maintenance and/or repair,

and other matters of mutual interest concerning the Easement". Although interest from the Wildlife Mitigation Trust Fund is available for conservation easement monitoring and baseline inventories, the trust fund was established for habitat, not recreation. Funds for addressing public recreation and management will need to come from other sources. FWP has a real property trust fund. The department adds money to this trust fund when we acquire additional lands using certain sources of funding. The interest from that fund provides revenues for the department to manage state properties assigned to FWP. The department also has other sources of funding that could be used to pay for costs of managing recreation. While we can not itemize potential future costs of managing public recreation, we recognized the future need and designed a mechanism to address that need when it arises.

#### **D. LIAISON TEAM**

- 1. How will the public be able to provide input to the Liaison Team? Philosophies of the landowner(s) and FWP may change over time. Suggest you have an advisory panel of elected officials and community leaders from impacted counties.**

FWP and the landowner agree that they will need to find a mechanism to obtain and incorporate public input into the Liaison Team proceedings. The Liaison Team will need to hear from and work cooperatively with a variety of interests including adjoining landowners, government officials, and the recreating public. FWP and PCT envision establishing some type of advisory or ad hoc group to assist in the citizen input process as one of the first steps that the Liaison Team will undertake once this agreement is in place. Interests that would likely be represented include: recreationists, cabin lessees or homeowners group, adjoining private land owner and/or grazing lessee, motorized and non-motorized users, conservation organizations, and other land management agencies in the area (e.g. DNRC and/or Forest Service). The Liaison Team would probably request public input on how they might structure the advisory group and how they would interact with the Liaison Team. One respondent suggested FWP keep a list of all those citizens or organizations that commented on the draft EA to include them in the Liaison Team planning process. The Liaison Team will ask for public review and input as it establishes the process of how it will interact with the public and other interests.

#### **E. SPECIFIC RIGHTS AFFECTED BY THE CONSERVATION EASEMENT**

- 1. FWP should closely monitor the aquatic resources after the conservation easement is in place because it does not have timber management restrictions.**

FWP intends to monitor the landowner's compliance with Best Management Practices and other conservation easement restrictions and Management Plan agreements as described in our Monitoring and Management Plan (page G-6). FWP already periodically monitors fish populations, water flows, and other variables in most of the two project areas as part of its overall fisheries management program. FWP would continue to undertake this monitoring program in the future. At this time, FWP does not have the resources to undertake a highly detailed study of water quality or other aquatic parameters that would be significantly over and above current activities. This responsibility falls within the purview of the Department of Environmental Quality.

- 2. FWP should require native forest or language that does not allow a tree farm.**

FWP did not address native species in the conservation easement. PCT did provide a Multi-resource Management Plan that describes their current timber program objectives and overall methods. The language in the Multi-Resource Management Plan and Sustainable Forestry Initiative (4.1.2.1.6) addresses the landowner's use of forest species or genetically engineered trees:



*Program participants that utilize genetically improved seedlings including those derived through biotechnology, will use sound scientific methods and follow all appropriate federal and state regulations and other internationally applicable protocols"*

**3. We are concerned that future landowners may not manage the land for timber.**

Under this conservation easement, the primary remaining economic value of the land would be timber. Future landowners are likely to continue to manage the land as timberland because most other uses such as residential, commercial development, or exclusive commercial outfitting are restricted. Additionally, future landowners cannot simply close the land to public access (except for specific reasons allowed in the conservation easement and elaborated in C.1. above). However, a conservation easement cannot make the landowner manage the land for timber. It is possible that a future landowner could purchase some of these lands and not harvest trees. We believe the risk of losing these lands to non-timber interests is probably greater under the no action alternative than under the proposed action. Under no action, PCT would sell 70,000 acres of its river and bench lands to developers and other individuals who similarly may have no interest in timber management.

**4. We believe trapping should be listed as a recreational use so it will not be confused with a commercial use and be inadvertently excluded from the conservation easement area.**

FWP will work with PCT to clarify the conservation easement language to include trapping as a recreational activity.

**5. We don't think grazing AUM's should be limited as this can limit future management options and limit ways to control brush/grass for fire hazard reduction.**

Under the concept of status quo, FWP and PCT felt the current levels of grazing AUM's should be allowed to continue but be capped at this level and limited to cattle and horses. The grazing lessees have the ability to work with the various landowners in the two basins to allocate those grazing AUM's over the project area however they see fit. FWP did not want to see sheep and goats included in those AUM's or other domestic species as they may come into conflict with native sheep (south end of the Thompson drainage). At this time, only horses and cattle are being grazed in the project area. However, the easement provides for use of other domestic species mutually agreed upon by FWP and PCT if necessary to meet future needs such as weed control or other management concerns.

**6. DNRC is concerned the conservation easement would limit their ability to enter into road access agreements with PCT for activities other than timber.**

The conservation easement is intended allow the landowner to enter into road access agreements with third parties for the purposes of timber management. Such an action would require notice as soon as practical but does not require prior review by FWP. In addition, the conservation easement is intended to allow the landowner to enter into road agreements with third parties for purposes other than timber management. FWP requires the landowner notify FWP 30 days prior to the execution of that agreement so that FWP can comment and address any concerns. It is not FWP's intent to limit development on adjoining lands. The easement will not preclude the landowner from granting access to neighboring land consistent with the purpose of the easement to protect the conservation values of the landowner's land.

**7. DNRC is concerned that they would not have the right to install utilities across conservation easement lands to provide utilities to school trust lands.**

The intent of the conservation easement is to give the landowner the right to allow for the installation of utilities in the landowner's road prisms without review or notification of FWP. If there is a need to place such utilities outside of the road prism across conservation easement land, FWP would need to approve the location of those utilities.

- 8. Would PCT's or the subsequent landowner's road access agreements with third parties need to include public access? Would PCT need to perfect the 30 or more agreements with DNRC that do not now include public access?**

Yes, PCT's or subsequent landowners' road access agreements with third parties must include non-motorized public access on the lands covered by the conservation easement. The landowner and the third party can negotiate whether or not the public can travel on the third party's lands, and, if so, ways that are acceptable by the third party. If that third party is private, the public would not be guaranteed any use of that road on the private portion of that road, where it crosses the private land. If that road accesses or crosses school trust land, DNRC rules and policies would govern the public access. At this time, the public can use school trust lands (not necessarily by vehicle) as long as they have a recreational permit. There is no requirement in the conservation easement to perfect existing agreements between DNRC and PCT.

- 9. DNRC asked if a multi-parcel land exchange between them and PCT would count as one against the 35 or more than one based on the number of parcels.**

The intent of the conservation easement was to limit the number of future landowners that could acquire lands under conservation easement and fragmentation of existing large-block ownership patterns. If DNRC decided to undertake a multi-parcel land exchange with a single new landowner, the transaction could be structured as one division of the land. Land exchanges where the land acquired through such exchange is encumbered by a conservation easement that limits further subdivision and development and provides public access is not counted against the 35 allowable splits.

- 10. Would a road access agreement between the landowner and a third party be considered a division of land and affect the limit on the number of land divisions?**

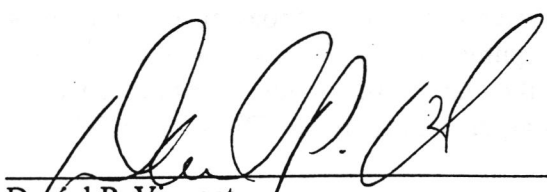
FWP and PCT do not consider a road easement with a third party to be a division of land.

- 11. How did FWP and PCT arrive at the 35 land splits or parcels?**

The number of land divisions that would be allowed under the conservation easement was a balance between FWP's need to have a minimum future number of landowners to monitor and PCT's need to have flexibility to sell or enter into land exchanges with other entities, including smaller timber companies and adjoining landowners. We considered size limits but could not agree because small private landowners may only want to exchange small pieces. Size limits became too restrictive for a project this size. Given that the size of this project area is 142,000 acres, the 35 number seemed to be logical and consistent with FWP's conservation monitoring experience. FWP currently has approximately 38 conservation easements in Montana that cover approximately 150,000 acres.

## THE DECISION

The total purchase price for the proposed conservation easement excluding property appreciation over the implementation period is \$29.9 million. The proposed decision recommends the FWP Commission agree to purchase this conservation easement on approximately 140,250 acres of PCT land located in both the Thompson and Fisher River valleys. Funding would primarily come from the Wildlife Mitigation Trust Fund (\$6.6 million), Avista Corporation (\$400,000), and the Forest Legacy Program (approximately \$22.9 million). The Forest Legacy Program requires a 3:1 state match. State match would be provided by the Trust Fund, Avista, in-kind contributions by FWP and PCT, and PCT's donation of value of \$1.6 million. The remainder of the project would be phased in over 3-4 years depending on available funding from Forest Legacy or other sources. During implementation, the balance of the project cost would be subject to annual update of the appraisal. FWP anticipates it will be able to provide the appropriate match over time to meet potential increases in the appraised value over time. FWP proposes to phase the project in beginning December 2000.

  
\_\_\_\_\_  
Daniel P. Vincent  
Region One Supervisor

11/9/00  
\_\_\_\_\_  
Date





# **Montana Fish, Wildlife & Parks**

490 North Meridian Road  
Kalispell, MT 59901

November 10, 2000

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## **THOMPSON-FISHER DECISION NOTICE RELEASED**

Montana Fish, Wildlife & Parks has issued the Decision Notice and Final Environmental Assessment for the Thompson and Fisher River Valleys Conservation Easement. This decision notice results from the draft environmental assessment released Sept. 15, 2000.

The Decision Notice recommends to the Fish, Wildlife & Parks Commission that we purchase the conservation easement on approximately 140,000 acres of Plum Creek land. The cost of the conservation easement \$29.9 million. The Commission will meet by conference call on Friday, Nov. 17 at 9:00 a.m. to make the final decision. If you would like to participate in this conference call please call Fish, Wildlife & Parks at 406-752-5501 to make arrangements.

The decision reflects extensive public comment received over the 2-year course of the proposed project. Ninety-three percent of people who commented during the formal public comment period on the draft environmental assessment supported the project.

Following the FWP Commission's action, the State Land Board is scheduled to meet and review the project on Monday, November 20. That meeting is also open to the public. If you have any questions regarding this project you can call Alan Wood at 406-751-4595.